STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RENNY MIKOYAN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

JONATHAN MIKOYAN and JANET MIKOYAN,

Respondents-Appellants.

UNPUBLISHED
April 19, 2002

No. 235447
Washtenaw Circuit Court
Family Division
LC No. 98-024749-NA

Before: Gage, P.J., and Griffin and Buth*, JJ.

MEMORANDUM.

Respondents-appellants appeal as of right the May 17, 2001 order terminating their parental rights to the minor child Renny Mikoyan pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (j) and (k)(iii). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I

Respondents-appellants claim that the trial court erred in denying their motions to adjourn the preliminary hearing. We disagree. A trial court's decision to grant or to not grant an adjournment is reviewed for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). At issue is whether the trial court abused its discretion in not finding good cause to adjourn the preliminary hearing pursuant to MCR 5.923(G)(2). Although an indigent respondent has the right to court-appointed counsel in child protective proceedings, MCL 712A.17c and MCR 5.915(B)(1), he has no right to select that counsel. Additionally, although Janet Mikoyan's attorney requested more time to review the file, her performance at the preliminary hearing shows that she was sufficiently familiar with the case to represent her client's interests. Accordingly, the trial court did not err in denying the motions to adjourn.

II

* Circuit judge, sitting on the Court of Appeals by assignment.

Respondents-appellants next claim that the trial court erred in admitting hearsay testimony at the preliminary hearing and relying on that testimony to establish jurisdiction over the child. In substance, this argument challenges the trial court's jurisdiction over the child. It is well established that a respondent in a child protective proceeding cannot collaterally attack the trial court's exercise of jurisdiction in an appeal from the order terminating the respondent's parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993); *In re Bechard*, 211 Mich App 155, 159-160; 535 NW2d 220 (1995). Furthermore, the trial court in the instant case did not base its jurisdiction on hearsay testimony, but rather on respondents-appellants' no contest pleas. MCR 5.971(C)(2).

III

Respondents-appellants contend that they were denied the effective assistance of counsel. Respondents-appellants did not move for a new trial or an evidentiary hearing. Accordingly, this Court's review of this issue is limited to matters apparent from the record . *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1999). In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal law context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). A criminal defendant claiming ineffective assistance of counsel must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). First, the defendant must show that counsel made errors so serious that counsel was not performing as the "counsel" guaranteed by the Sixth Amendment. *People v Carbin*, 463 Mich App 590, 600; 623 NW2d 884 (2001). This requires overcoming the strong presumption that the counsel's performance was sound trial strategy. *Id.* Next, the defendant must show that the deficient performance prejudiced the defense, which requires a showing of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. *Id.*; see also *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Here, the record does not show that any of respondents-appellants' attorneys' alleged errors were either sufficiently serious or prejudicial to their clients' position. Accordingly, respondents-appellants are not entitled to relief on this issue.

IV

Respondents-appellants claim that it was "inappropriate" for petitioner-appellee and the trial court to consider evidence that their older child suffered a similar injury to the one that led to this case. However, they do not explain why they believe it was inappropriate for the trial court to rely on this evidence. They do not cite any rule of evidence or any other authority in support of their claim. Consequently, this issue lacks merit because a party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 705; 609 NW2d 607 (2001). Additionally, the issue is waived because respondents-appellants failed to cite supporting authority. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 624 (2000). Nonetheless, we will briefly address the issue because it is entirely appropriate for a family court to consider a parent's conduct toward a sibling. This Court has recognized that how a parent treats one child is probative of how that parent might treat another. *In Re Powers*, 208 Mich App

582, 588-589 (1995). Accordingly, respondent's treatment of Donny is probative of how they might treat Renny. Furthermore, evidence that both children suffered a femoral injury during infancy, and that respondents lied both times about how the injury occurred, makes it more probable than not that the injuries were not accidents, but deliberate abuse.

V

Finally, we find no merit to respondents-appellants' claim that the trial court erred in declining to find that termination was not in the child's best interests. When the petitioner establishes by clear and convincing evidence that a statutory basis or bases for termination exists, the court must order termination of parental rights unless it finds from evidence on the record that termination is not in the child's best interests. MCL 712A.19b(5), *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). This Court reviews the best interests decision for clear error. *Id.*, 356-357. Evidence that three witnesses believed that respondents-appellants' parental rights should not be terminated is not sufficient to establish that termination is not in the child's best interests in light of the injuries suffered by Renny and his older brother.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth